upon to lay down a rule by which to determine when "proof of guilt is evident or the presumption thereof is great." A few early cases held that the fact that an indictment had been brought against the accused was conclusive that proof was evident or presumption great. *Territory* v. *Benoit,* 1 Mart. (La.) 142; *People* v. *Tinder,* 19 Cal. 539. But such a rule is not generally recognized today. *Ex parte White,* 9 Ark. 222; *Lynch* v. *People,* 38 Ill. 494; *Ex parte Kendall,* 100 Ind. 599; *State* v. *Hill.* 1 Tread (S. C.) 242. Beginning with *Com.* v. *Keeper of the Prison,* 2 Ashm. (Pa.) 227, it was held, construing the words in question, that bail should be refused where the judge would sustain a capital conviction, pronounced by a jury, on evidence of guilt such as that exhibited on the application for bail and that bail should be allowed where the prosecutor's evidence was of less efficacy. This rule, known as the Pennsylvania rule, has been approved often and is still probably the one most generally followed. *Thrasher* v. *State,* 26 Fla. 526, 7 S. 847; *Ex parte Richardson,* 96 Ala. 110, 11 S. 316; *Matter of Trioa,* 64 Cal. 152, 28 P. 231; *Ex parte Foster,* 5 Tex. App. 625, 32 Am. Rep. 577; *Street* v. *State,* 43 Miss. 1; *State* v. *Crocker,* 5 Wyo. 385, 40 P. 681; *State* v. *Summons,* 19 Oh. 139; *Ex parte Claunch,* 71 Mo. 233. But it has not escaped severe criticism. In *Ex parte Tom Smith, Jr.,* 23 Tex. App. 100, 5 S. W. 99, the Texas Court of Appeals refused to follow the Pennsylvania rule and overruled *Ex parte Foster* (supra). The Supreme Court of Mississippi in *Ex parte Bridewell,* 57 Miss. 39, criticises the rule and refuses to approve Street v. *State,* (supra). Other courts have not always followed the rule consistently. *Ex parte Walpole,* 85 Cal. 362, 24 P. 657. See also *Ex parte McAnally,* 53 Ala. 495, 25 Am. Rep. 646. Some courts seem to regard the words "proof evident or presumption great" as in themselves sufficiently clear to serve as a guide. *In re Malison,* 36 Kan. 725, 14 P. 144; *Ex parte Walton,* 79 Ind. 600; *Ullery* v. *Com.,* 8 B. Mon. (Ky.) 3; *McCoy* v. *State,* 25 Tex. 33. In the principal case it is maintained that the Pennsylvania rule is not sufficiently mindful of the rights of the accused and that the words "proof evident or presumption great" are too general to be useful as a guide in weighing the evidence when the liberty of the citizen is in the balance. Consequently, the rule is laid down as stated in the statement of the principal case (supra). *Ex parte Bridewell,* 57 Miss. 39; *Ex parte Tom Smith, Jr.,* 23 Tex. App. 100, 5 S. W. 99; *Ex parte Wray,* 30 Miss. 673; *In re Losasso,* 15 Colo, 163, 24 P. 1080, 10 L. R. A. 847. See also *Ex parte McAnally,* 53 Ala. 495, 25 Am. Rep. 646, which has been cited as an authority in favor of both the Pennsylvania rule and the rule laid down in the principal case.

CRIMINAL LAW—MURDER—ELEMENTS OF MURDER.—A requested instruction that one of the ingredients of murder in the second degree is wilfulness and malice aforethought, and unless the jury believe that deceased came to his death by blows inflicted upon him by defendant intentionally and with malice aforethought, they cannot find him guilty of murder in the second degree was *held,* to be misleading for the use of the word "aforethought" as applied to murder in the second degree, and hence to have been properly refused. *Smith* v. *State* (1908), — Ala. —, 45 So. Rep. 626.

Section 4854, Criminal Code of Alabama, defines murder in the first degree, so far as is material, as "every homicide perpetrated by poison, lying in wait or any other kind of wilful, deliberate, malicious, and premeditated killing." Every other homicide, committed under such circumstances as would have constituted murder at common law, is, by the same section, declared to be murder in the second degree. These are substantially the sections in force in a majority of states. The principal case is not argued, and but a single case, *Wilson* v. *State,* 128 Ala. 17, 29 S. 569, is cited in support of the majority opinion. In that case, an instruction that unless the defendant killed the deceased under a "formed design and with malice aforethought," he could not be convicted of either degree of murder, was held to be properly refused because the words "formed design" were misleading as applied to murder in the second degree. Nothing was said in the opinion as to the words "malice aforethought." On the other hand, it is argued that there can be no conviction for murder in the second degree under the statute except where there could have been a conviction for murder at common law Hence, as malice aforethought was an ingredient of murder at common law (21 Cyc. 703), it is an ingredient of murder in the second degree. *Fields* v. *State,* 52 Ala. 348; *Perry* v. *State,* 43 Ala. 21; *Ward* v. *State,* 96 Ala. 100. Under statutes similar to those of Alabama, it has been held that homicide committed with malice aforethought, but without deliberation, is murder in the second degree. 21 A. & E. Ency. L., p. 168; *State* v. *Curtis,* 70 Mo. 594; *People* v. *Foren,* 25 Cal. 361. See similar statements by way of *dicta* in *State* v. *Baker,* 13 Mont. 160, 32 P. 647; *Mitchell* v. *State,* 13 Tenn. (5 Yerg.) 339. See also *Babcock* v. *People,* 13 Colo. 515, 22 P. 817; *State* v. *Bradley,* 64 Vt. 466, 24 A. 1053; *Fahnestock* v. *State,* 23 Ind. 231; *Thomas* v. *State,* 45 Tex. Cr. R. 111; 74 S. W. 36; *Territory* v. *Scott,* 7 Mont. 407, 17 P. 627.

Damages—Action by Husband for Loss of Wife's Services.—Plaintiff's wife was struck and injured by defendant's automobile. During the wife's disability her mother-in-law came into the family and gratuitously took her place as housekeeper. Plaintiff sued to recover for the loss of his wife's society and services. *Held,* he could recover for the loss of conjugal fellowship and society, but it was error to admit evidence as to the prevailing rate of wages for servants since plaintiff "had neither incurred nor become liable for any sum for services of a housekeeper." *New York Transp. Co.* v. *Garside* (1907), — C. C. A., 2nd Cir. —, 157 Fed. Rep. 521.

The court is probably right in allowing the husband to recover for the loss of his wife's society, although such injury has been held to be too sentimental and intangible to permit a recovery. *Hawkins* v. *Front Street Cable Ry. Co.,* 3 Wash. 592, 28 Pac. 1021, 28 Am. St. Rep. 72, 16 L. R. A. 808. But the correctness of the court's refusal to allow a recovery for the loss of the wife's services is at least a doubtful question. Although no authorities are cited in this portion of the opinion and, indeed, no case directly in point seems to have been decided, yet a consideration of general principles and analogous cases may lead to a different conclusion. It is a general rule that "there can be no abatement of damages on the principle of partial com-